



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 9, 2014

Ms. Amanda M. Bigbee
General Counsel
Keller Independent School District
350 Keller Parkway
Keller, Texas 76248

OR2014-18150

Dear Ms. Bigbee:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 538952.

The Keller Independent School District (the "district") received a request for the student passage rates for the State of Texas Assessments of Academic Readiness ("STAAR") exam for all seventh and eighth grade teachers at Timberview Middle School for the past school year. You claim the requested information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted representative sample of information.²

The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA, 20 U.S.C. § 1232g, does not permit state and local

¹Although the district also raises section 552.026 of the Government Code, we note section 552.026 is not an exception to disclosure. Rather, section 552.026 provides the Act does not require the release of information contained in education records except in conformity with the Family Educational Rights and Privacy Act ("FERPA") of 1974. Gov't Code § 552.026.

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act.³ Consequently, state and local educational authorities that receive a request for education records from a member of the public under the Act must not submit education records to this office in unredacted form, that is, in a form in which “personally identifiable information” is disclosed. *See* 34 C.F.R. § 99.3 (defining “personally identifiable information”). Because our office is prohibited from reviewing education records to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA. Such determinations under FERPA must be made by the educational authority in possession of the education records. Thus, should the district determine all or portions of the requested information consist of “education records” that must be withheld under FERPA, the district must dispose of any such information in accordance with FERPA, rather than the Act.

You claim the requested information consists of confidential teacher evaluations under section 21.355 of the Education Code. Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information protected by other statutes, including section 21.355 of the Education Code. Section 21.355 provides, in relevant part, “[a] document evaluating the performance of a teacher or administrator is confidential.” Educ. Code § 21.355(a). This office has interpreted section 21.355 to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. *See* Open Records Decision No. 643 (1996). In Open Records Decision No. 643, we determined for purposes of section 21.355, the word “teacher” means a person who is required to and does in fact hold a teaching certificate under subchapter B of chapter 21 of the Education Code and who is in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See id.* at 4. Upon review, we find you have failed to demonstrate how the information at issue consists of documents evaluating the performance of a teacher for purposes of section 21.355 of the Education Code. Accordingly, none of the information at issue may be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 39.030 of the Education Code,⁴ which provides in relevant part:

- b) The results of individual student performance on academic skills assessment instruments administered under [subchapter B, chapter 39 of the

³A copy of this letter may be found on the Office of the Attorney General’s website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

⁴The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Education Code] are confidential and may be released only in accordance with [FERPA]. However, overall student performance data shall be aggregated by ethnicity, sex, grade level, subject area, campus, and district and made available to the public, with appropriate interpretations, at regularly scheduled meetings of the board of trustees of each school district. The information may not contain the names of individual students or teachers.

Educ. Code § 39.030(b). The information at issue consists of aggregated results of student performance on the STAAR test, which is an academic skills assessment instrument as contemplated by subchapter B, chapter 39 of the Education Code. We note overall student performance data aggregated by grade level, subject area, and campus is public information under section 39.030(b), but the individual teacher names associated with such aggregated data are confidential. Therefore, the district must withhold the individual teacher names we have marked under section 39.030(b) in conjunction with section 552.101 of the Government Code.

In summary, if the district determines all or portions of the requested information consist of "education records" that must be withheld under FERPA, then the district must dispose of any such information in accordance with FERPA, rather than the Act. The district must withhold the individual teacher names we have marked under section 552.101 of the Government Code in conjunction with section 39.030(b) of the Education Code. The remaining information must be released.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Brian E. Berger
Assistant Attorney General
Open Records Division

BB/ac

Ref: ID# 538952

Enc. Submitted documents

c: Requestor
(w/o enclosures)